

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

CANAL INSURANCE COMPANY,

Plaintiff,

v.

CIVIL ACTION NO. 1:21-cv-00324

5M TRANSPORT, LLC, and
WILLIAM J. THOMPSON,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff's motion for judgment on the pleadings, filed on November 15, 2022. See ECF No. 36. By Memorandum Opinion and Order dated March 29, 2023, the court granted plaintiff's motion to file an amended complaint. See ECF No. 39. Defendant 5M Transport, LLC has failed to appear. Defendant William J. Thompson filed an Answer to the original complaint, see ECF No. 11, but has failed to respond to the amended one.¹

"Where, as here, the plaintiff moves under Rule 12(c) for judgment on its own claim, the court should grant the motion only if a defendant's answer or other pleading admits, alleges, or fails to deny facts which, taken as true, show the plaintiff is entitled to judgment as a matter of law against that

¹ The record does not indicate whether he was served with the amended complaint.

defendant." Atlantic Specialty Ins. Co. v. Bindea, 632 F. Supp.3d 681, 694 (W.D. Va. 2022) (internal citation and quotations omitted). As noted above, plaintiff's motion was filed while the original complaint was the operative pleading. And, although defendant Thompson responded to the original complaint, he has not answered the amended one. Therefore, the motion is **DENIED** without prejudice with leave to refile a new motion directed to the amended pleadings.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented parties.

IT IS SO ORDERED this 28th day of September, 2023.

ENTER:

David A. Faber
David A. Faber
Senior United States District Judge